HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PEITION No.956 OF 2007

Between:

M/s.Sree Yogeshwara Industries
. . .Petitioner

AND

The General Manager,
S.B.H., Hyderabad and others
. . .Respondents

:: ORDER ::

Counsel for the Petitioner : Smt. M.Uma Devi
for Shri Ch.Janardhan Reddy

13th February, 2007

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PER G.S.SINGHVI, CJ

This is a petition for quashing orders dated 31-3-2006 and 30-5-2006 passed by the Debts Recovery Tribunal, Hyderabad (for short, 'the Tribunal') and the Debts Recovery Appellate Tribunal, Chennai (for short, 'the Appellate Tribunal') respectively. Another prayer made in the petition is for quashing sale notice
dated 10-12-2005 and proceedings dated 17-1-2006 issued by the Authorised Officer, State Bank of Hyderabad, Dubba (New Gunj) Brnach, Nizamabad (respondent No.4 herein).

The petitioner availed loan of Rs.20,00,000/- from State Bank of Hyderabad (for short, 'the bank') for setting up rice mill. Later on, the bank sanctioned cash credit facility to the tune of Rs.50 lakhs. For securing repayment of loan, the petitioner mortgaged factory land and building measuring Ac.2.10 guntas situated in Survey Nos.189/AA, 189/E and 190/A, Khanapur Village Shivar, Kaloor Road, Nizamabad. Shri Goli Srinivas, Managing Partner of the petitioner mortgaged his house bearing No.6-12-1141/A situated at Namdevwada, Nizamabad. On account of the petitioner's failure to repay the loan together with interest, the bank initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). Notices under Sections 13(2) and 13(4) of the Act were issued to the petitioner requiring it to pay a sum of 75,80,066.69 ps., but it did not repay the amount. Therefore, after issuing notice dated 10-12-2005, respondent No.4 auctioned the factory land and building along with plant and machinery as also the house property belonging to the Managing Partner of the petitioner. Respondent No.8 gave highest bid of Rs.60,98,000/- for the land and

building of the factory together with plant and machinery and Rs.19,91,781/- for the house property.

The petitioner challenged the proceedings initiated by the bank and the auction conducted by respondent No.4 by filing an application under Section 17 of the Act, which was registered as S.A.No.158 of 2005. By an order dated 31-3-2006, the Tribunal dismissed the S.A. Last two paragraphs of that order read as under:

> "A perusal of the records further reveals that the 1st applicant unit, represented by its Partners Sri Goli Srinivas and Goli Manjuloa Rani preferred a petition under Sec.13 of the Provincial Insolvency Act before the **Hon'ble Senior Civil Judge, Nizamabad** for an adjudication to the effect that the 1st applicant is insolvent. The schedule A of the said petition reflects the list of creditors and the same depicts the respondent Bank as Creditor No.16 and the 1st applicant's liability to the respondent as Rs.75.00 lakhs. Schedule 'C1 of the said Insolvency Petition is the very same secured asset, against which the respondent Bank is presently proceeding under Sec. 13(40) of "THE SARFAESI ACT" as a secured creditor and from the above it can be easily inferred that the 1st applicant has clearly admitted its liability and the creation of the secured asset in favour of the respondent Bank. It is seen that the said I.P. has not been withdrawn after the auction sale was completed. The fact that the applicants have also not chosen to include the fact of I.P. proceedings in their reply to the respondent and the mere fact of withdrawing the I.P. proceedings after the auction sale was over, and further the fact that a partition suit has been filed for the very same property being held by the secured creditor after filing of the S.A. would clearly reflected that the applicants lack bona fides.
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> Therefore, as it is seen from the above, the respondent Bank has taken proper steps under Secs. 13(2) and 13 (4) of "THE SARFAELSI ACT" and has sold the property validly, it has to be held that there are no merits in the case of the applicants and that the applicants are not entitled to the setting aside of the proceedings of the respondent bank as prayed for.

Accordingly, this S.A. is dismissed. No costs."

Feeling dissatisfied with the order of the Tribunal, the petitioner filed an appeal under Section 18 of the Act. The Appellate Tribunal passed order dated 18-4-2006, whereby it stayed the proceedings initiated by the bank subject to the condition of payment of the specified amount and court fee. The petitioner did not comply with the said condition. Therefore, the Appellate Tribunal vide its order dated 30-5-2006 dismissed the appeal. That order reads as under:

> "The learned Advocate for the appellant states that the appellants are not in a position to comply with the conditional order dated 18-4-2006 and the said statement is placed on record and the interim stay granted stands vacated.
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> The learned Advocate for the appellants further submits that his clients instructed him to state that they are not in a position to pay the necessary court fee also and also made an endorsement to that effect.
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> In view of the said submission, the appeal IN (SARFAESI) 155/2006 stands rejected for non-payment of court fee."

Writ Petition No.22190 of 2006 filed by the petitioner for quashing orders dated 31-3-2006 and 30-5-2006 and sale proceedings dated 17-1-2006 was dismissed by the learned Single Judge on 3-11-2006. Writ Appeal No.1231 of 2006 preferred by the petitioner was dismissed by the Division Bench along with Writ Petition No.22190 of 2006, but leave was granted to it to file fresh petition. Thereafter, the petitioner filed the present petition for quashing the proceedings initiated by the bank for recovery of its dues, as also the sale of the factory and house property. After hearing learned counsel for the petitioner, the Court passed order dated 18-1-2007, which reads as under:

> "This petition is directed against order dated 30-5-2006 passed by the Debts Recovery Tribunal at Chennai, whereby the appeal preferred by the petitioner against the order of the Tribunal was dismissed on the ground of non-payment of

Court fee.

At the hearing, learned counsel for the petitioner gave out that his client is ready and willing to deposit the entire amount due to the bank along with interest.

In order to judge the bona fides of the petitioner, we direct him to deposit at least 50% of the amount due to the bank within a period of two weeks from today.

Put up on 12-2-2007.

In the meanwhile, the petitioner may amend the cause title."

On the next date of hearing i.e. on 9-2-2007, learned counsel for the petitioner sought adjournment by saying that his client could not take steps to deposit 50% of the balance amount because the bank was demanding interest up to 27-1-2007. In reply to the Court's query whether his client got prepared draft or bankers cheque representing 50% of the amount, learned counsel gave a negative reply. Thereupon, the case was adjourned for today so as to enable the petitioner to produce the demand draft.

Smt. M.Uma Devi, who has appeared on behalf of Shri Ch. Janardhan Reddy, gave out that the petitioner is not in a position to pay even 50% of the amount due to the bank. She also candidly admitted that the petitioner did not pay the amount specified in interim order dated 18-4-2006 passed by the Appellate Tribunal and the court fee.

The aforesaid statement of the learned counsel makes it clear that the petitioner is neither willing nor it is in a position to pay even half of the amount due to the bank. Therefore, we see no justification to entertain its prayer for quashing orders

dated 31-3-2006 and 30-5-2006 passed by the Tribunal and the Appellate Tribunal respectively and the sale proceedings.

Even on merits, the learned counsel could not put forward any

tangible argument to show that the orders passed by the Tribunal and the Appellate Tribunal suffer from any jurisdictional infirmity or error of law apparent on the face of the record, which may justify exercise of the High Court's power of judicial review under Article 226 of the Constitution of India and that too by ignoring the fact that the petitioner not only failed to comply with the condition enumerated in the stay order passed by the Appellate Tribunal, but also failed to pay the requisite court fee.

For the reasons mentioned above, the writ petition is dismissed.

As a sequel to dismissal of the main petition, W.P.M.P.Nos.1181 and 3269 of 2007 filed by the petitioner for interim relief are disposed of as infructuous.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

Date: 13.02.2007

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